STATE OF MICHIGAN

COURT OF APPEALS

MPC CASHWAY LUMBER COMPANY,

Plaintiff-Appellant,

V

GARY L. HULL,

Defendant,

and

PASSALACQUA BUILDERS, INC. and JOSEPH PASSALACQUA,

Defendants/Cross-Defendants,

and

HOMEOWNERS RECOVERY FUND,

Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
February 14, 2003

No. 231884
Ingham Circuit Court
LC No. 95-081497-CH

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order directing defendant Homeowners Recovery Fund ("the Fund") to pay plaintiff MPC Cashway Lumber Company ("MPC") in the amount of $2,078.39, plus interest pursuant to MCL 600.6013(6). We affirm.

This case involves a lien foreclosure action of a claim of lien under the Construction Lien Act, MCL 570.1101 *et seq*., and was previously before us in *MPC Cashway Lumber Co v Hull*, 238 Mich App 441, 452; 606 NW2d 392 (1999), where we remanded to the trial court as follows:

> On remand, the court shall determine whether there has been compliance with the requirements of § 203 [MCL 570.1203], and if so, the court shall examine the sworn statements and determine whether amounts remain owing to plaintiff after

> applying the provisions of subsection 6 of § 109 [MCL 570.1109(6)]. [238 Mich App at 452.]

Following the remand, the trial court granted MPC's motion for summary disposition under MCR 2.116(C)(10) and awarded it $8,745.13 and judgment interest under MCL 600.6013(6). Thereafter, the Fund moved for reconsideration under MCR 2.119(F) on the ground that there was a palpable error in the trial court's award of $8,734.13 to MPC. The trial court then granted the Fund's motion for reconsideration, vacated its previous order, and awarded MPC $2,078.39 and judgment interest under MCL 600.6013(6).

The first issue that plaintiff MPC raises on appeal is whether it complied with the requirements of MCL 570.1203. However, defendant Fund has never challenged plaintiff's compliance with the statutory requirements. Because the parties agree that the issue is not in dispute, we may consider it resolved and focus our analysis on the issues that are in dispute.

Plaintiff next argues that the trial court improperly reduced defendant Fund's obligation by $1,099.06 for a payment attributed to materials supplied by MPC of Williamston, which plaintiff asserts is a separate entity. However, we need not address this issue because there is no indication in the present record that plaintiff raised it in the lower court. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Moreover, we note that despite a November 1, 2002 request by our chief clerk, plaintiff has failed to provide the transcript of the December 20, 2000 hearing, which presumably sheds some light on this claim. It is a plaintiff's responsibility to provide copies of transcripts. MCR 7.210(B)(a). A plaintiff is deemed to have abandoned an issue on appeal if he fails to provide the transcript of a relevant proceeding. *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 654; 517 NW2d 864 (1994); *Brown v Jo-Jo-Ab, Inc*, 191 Mich App 208, 210; 477 NW2d 121 (1991). Therefore, we also deem the issue abandoned on appeal. *Taylor*, *supra* at 654.

In addition, plaintiff argues that the third sworn statement was invalid because it was partially paid and that the fourth sworn statement was invalid because it was not notarized. Contrary to defendant's assertion, the law of the case doctrine does not prohibit an inquiry into the validity of the sworn statements. Under that doctrine, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. *Driver v Hanley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997). According to our remand order, defendant's obligation was to be reduced by payments made by the owner to the contractor "pursuant to *valid* sworn statements or waivers of lien." *MPC Cashway Lumber*, *supra* at 452 (emphasis supplied).

According to plaintiff, the third statement was invalid because it was inaccurate. However, the validity of a sworn statement depends upon its compliance with the formalistic requirements of the Construction Lien Act. Because plaintiff identifies no structural or formalistic defects in the third sworn statement, there is no basis for a finding that it was invalid. As for the fourth sworn statement, we need not determine its validity to resolve this appeal because it contained no amounts relevant to the instant dispute. Accordingly, plaintiff cannot show that the trial court erred in determining the amount that defendant Fund owed plaintiff on the basis that the third and fourth sworn statements were invalid.

Next, plaintiff claims that the account invoices constitute written instruments under the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*, and therefore MCL 600.6013(5), rather than MCL 600.6013(6), determines the applicable interest rate. MCL 600.6013(5) allows the interest rate between the date of filing the complaint and the date of entry of the judgment to be set by the written instrument. While MCL 600.6013(5) does not define "written instrument," the Supreme Court in *Yaldo v North Pointe Ins Co*, 457 Mich 341, 347 n 3; 578 NW2d 274 (1998) expressly declined to apply the UCC definition of "written instrument." Here, plaintiff MPC has failed to provide any authority for its position that an order or judgment on its foreclosure claim is a judgment on a written instrument, as contemplated by MCL 600.6013(5). Thus, the trial court did not err in determining that interest should be calculated according to MCL 600.6013(6).

Finally, plaintiff argues that the interest that it paid should be included in its recovery from the Fund. Here, plaintiff's reliance upon *Erb Lumber v Lien Fund*, 206 Mich App 716; 522 NW2d 917 (1994) is misplaced because that case addressed the issue of whether time price differentials could be recovered as part of a construction lien, not whether interest should be included in such a recovery. Therefore, the trial court did not err when its award to plaintiff did not include the amount that plaintiff paid in interest.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio